

Subject: Block by Block
From: Paul Keller <pkeller@mackregroup.com>
Date: 11/5/18, 4:43 PM
To: Ellen Riotto <ellen@southpark.la>

I vote in favor of the award and agreement.

Paul Keller

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On Nov 5, 2018, at 7:32 PM, Ellen Riotto <ellen@southpark.la> wrote:

Apologies for the delay here, JD. Happy to connect – how's tomorrow between 2 and 4pm, or Wednesday between 11am and 3pm?

Best,

Ellen

Ellen Riotto
Executive Director
<image001.png>
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From: "J.D. Siegel" <jdSiegel@mackregroup.com>

Date: Thursday, November 1, 2018 at 11:38 AM
To: Carol Humiston <chumiston@bglawyers.com>
Cc: Ellen Riotto <ellen@southpark.la>, Paul Keller <pkeller@mackregroup.com>
Subject: RE: CA records request

Carol, great speaking with you. Appreciate the guidance by phone and below.

Ellen, can we connect about email going forward? Let me know when is good. Thanks

JD

From: Carol Humiston [<mailto:chumiston@bglawyers.com>]
Sent: Thursday, November 01, 2018 1:10 PM
To: J.D. Siegel <jsiegel@mackregroup.com>
Cc: ellen@southpark.la; Paul Keller <pkeller@mackregroup.com>
Subject: RE: CA records request

Hi JD,

I presume this inquiry is in response to Ellen's prior email.

I can tell you I am currently litigating the issue—Are the emails of volunteer Board members of a Business Improvement District, from their private email domains on their private computers, subject to disclosure as “public records” under the CPRA? This is an issue of first impression under the CPRA. As an attorney representing BIDs, I am taking the position that they are not.

BUT ...

BIDs are defined as public agencies under California law (not public entities). The CPRA applies to public agencies and public entities. The California Supreme Court has held that employees of public entities that use their private email to conduct the public entities' business must provide those private emails in response to a CPRA request. See *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017).

Because of the foregoing, I think it is very possible that the Court in my case will conclude the same rationale for the City of San Jose case applies to volunteer Board members. So what does this mean for volunteer Board members?

My advice to the BIDs is that unless they want to get involved in extremely costly litigation—and this particular CPRA requestor is extremely litigious and has a cadre of attorneys who pursue his cases for him—upon receipt of a CPRA request for Board member emails pertaining to the BID's business, they ask the Board member and they accept the Board members' response that they have no emails. I think it is fairly clear from the City of San Jose case that the BID has no right to search the private email itself. If the Board member does disclose email, the BID should review them to be sure they constitute BID business, and redact out private information including IP addresses, etc. And I also advise that Board members who do receive and send BID business from their private emails not retain those emails unless there is a reason to do so. I do not believe any Court would hold that the BID or the Court can control when a private person decides to retain or delete their emails.

I would be happy to talk to you about this. Just give me a call.

Carol

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From: J.D. Siegel <idsiegel@mackregroup.com>
Sent: Thursday, November 01, 2018 9:25 AM
To: Carol Humiston <chumiston@bglawyers.com>
Cc: ellen@southpark.la; Paul Keller <pkeller@mackregroup.com>
Subject: CA records request

Carol,

Further to the questions that came through Thomas Cho of our LA office, can you point me to the statute or guidance that suggests Mack Real Estate Group is required to make its email archives available in response to a California public records request? Any emails on that server are the property of our firm and not its personnel.

All I have been able to locate is a statute applying to public agencies/instrumentalities. I have been unable to make the leap from requirements that apply to an agency to obligations of a firm that employs a person who is serving as a director for one of those agencies.

Furthermore, if BID activity is subject to public records request, I would strongly prefer that the BID provide email accounts to its directors and not conduct business through personal/work email addresses. Is that something to discuss with you, Ellen?

Thank you for your assistance. I'm around today if you'd like to connect by phone.

Regards,
JD

J.D. Siegel
General Counsel & CCO

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—Attachments:—

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1.4 kB